

**MINUTES
of the
SEVENTH MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**December 18, 2009
Room 307, State Capitol
Santa Fe**

The seventh meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative Danice Picraux, chair, at 9:05 a.m on Friday, December 18, 2009. A quorum was present.

Present

Rep. Danice Picraux, Chair
Sen. Dede Feldman, Vice Chair
Sen. Rod Adair
Rep. Nora Espinoza
Rep. Joni Marie Gutierrez
Rep. Antonio Lujan
Sen. Gerald Ortiz y Pino

Absent

Sen. Linda M. Lopez

Advisory Members

Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Eleanor Chavez
Rep. Miguel P. Garcia
Rep. John A. Heaton
Rep. James Roger Madalena
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Sen. Sander Rue
Rep. Mimi Stewart

Rep. Jose A. Campos
Rep. Nathan P. Cote
Rep. Keith J. Gardner
Sen. Clinton D. Harden, Jr.
Sen. Gay G. Kernan
Rep. Dennis J. Kintigh
Rep. Rodolfo "Rudy" S. Martinez
Sen. Mary Kay Papen
Rep. Jeff Steinborn
Sen. David Ulibarri
Rep. Gloria C. Vaughn

Guest Legislators

Rep. Gail Chasey
Sen. Mary Jane M. Garcia
Rep. Edward C. Sandoval

Staff

Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Karen Wells, Researcher, LCS
Mark Harben, Records Officer, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts are in the meeting file.

Friday, December 18**Welcome and Introductions**

Representative Picraux welcomed everyone. The minutes of the November meeting were unanimously approved.

Home and Community-Based Waivers: How Administrative and Financial Duties Are Apportioned Among Departments

Michael Spanier introduced himself as the newly appointed secretary of the Aging and Long-Term Services Department (ALTSD) and made introductory comments. Dr. Alfredo Vigil, secretary of health, and Larry Heyeck, deputy director, Medical Assistance Division (MAD), Human Services Department (HSD), also introduced themselves and members of their staff that were present to answer questions during the presentation. Kimberly Austin-Oster, division director, Elderly and Disability Services Division, ALTSD, described the general elements of waivers, including who is eligible to receive services. An overview was provided about the current home and community-based waivers in existence in New Mexico, and how the ALTSD, Department of Health (DOH) and HSD interact with each other to administer these waivers. More detailed information was provided about each of the waivers. Secretary Vigil discussed the challenges of managing the developmental disability (DD) waiver, focusing especially on the waiting list. He highlighted other services that people on the waiting list receive while they wait for a DD slot to open up. He discussed the financial challenges of expanding the DD waiver, he noted that the Legislative Finance Committee (LFC) is currently auditing the DD waiver and he anticipates recommendations regarding how to streamline the program, operate it more efficiently and serve more people.

Secretary Spanier described the Coordination of Long-Term Services (CoLTS) program, providing updates on enrollment and costs of the program. The ALTSD maintains a central registry that constitutes the waiting lists for all of the waivers. He reiterated that many of the people on various waivers are receiving other services and are assisted in enrollment of those services by the Aging and Disability Resource Center (ADRC). Secretary Spanier identified the process by which people get on a waiting list, including the role of the ADRC. He identified the number of people who were placed on the disabled and elderly (D&E) waiver following an appropriation of \$750,000 by the legislature. He described community reintegration as the process by which people are now able to get on the waiver.

Mr. Heyeck described the goals and objectives for the CoLTS program, including the

number of people served, and the potential to serve people with more services in the communities in which they live. He identified that up to 46 percent of the Medicaid budget goes toward paying for people who concurrently qualify for Medicare as well as Medicaid. He identified how CoLTS recipients are able to access the different services in the two programmatic components of CoLTS. He noted that there are serious challenges to aligning services with recipients due to differing categories of eligibility for the program. He acknowledged that there have been many problems in implementing the program in the areas of payments and claims, customer service, phase-in of a new third-party assessor and provider contracting issues. He described efforts that have been undertaken to address the problem areas and improve the program, including an audit of the claims payment process in each managed care organization (MCO). He noted that the Personal Care Option (PCO) program, which is a service available in CoLTS, is extremely important to many recipients, but is laden with problems that have surfaced as a result of the implementation of CoLTS. The MAD is considering converting the PCO from a benefit in the state plan to a waiver program in order to have more control over the program. He noted that New Mexico is a leader in the nation in its efforts to streamline long-term services.

Committee members asked questions and made comments in the following areas:

- clarification regarding a plan to move the PCO program from a state plan benefit into a waiver;
- the kind of waiver that would be pursued; the PCO might become a home and community-based services waiver, or the entire CoLTS program might be consolidated into a global waiver;
- whether conversion of the PCO into a waiver would result in some people losing services; it is too early in the process to know; the MAD hopes it will not have to cap the program;
- ways in which the department intends to reduce existing waiting lists; use of a universal assessment tool is part of the answer;
- whether there will be a waiting list for the PCO if it becomes a waiver; hopefully not at first, but possibly within three years as the program is growing at an unsustainable rate;
- whether MCOs are still needed to manage long-term services;
- what it would take to eliminate the waiting lists;
- clarification regarding the Mi Via waiver, and how it is different from the other waivers; Kathy Stevenson, ALTSD, provided the clarification regarding this self-directed waiver program; and
- whether the state has responsibility when recipients of care lose a provider.

The chair invited Jim Jackson, director of Disability Rights New Mexico, to join the panel and to offer a consumer perspective on the questions and comments. He noted that the question just asked is especially complex and challenging in the Mi Via waiver, where consumers are considered employers, but may not have the skills to know how to manage such a loss.

Questions and comments continued, as follows:

- acknowledgment of the importance of having clear parameters for determining when a family member gets paid for caregiving responsibilities;
- how and when decisions are made regarding end-of-life care, such as hospice, particularly on the DD waiver;
- why a unique universal assessment tool needs to be developed;
- why the problems occurred with payments to providers and why they cannot be fixed;
- whether it now costs more to provide services to recipients than it did when they were in an institution;
- whether the costs for long-term services have gone up under CoLTS and in what amount; costs have gone up, but it is due to the fact that many recipients have more needs than were anticipated; and
- reasons why the CoLTS MCOs have not been able to complete assessments for all CoLTS enrollees.

The chair recognized Diamond Tizhanet and his caregiver, Michael McGrath, for public comment. Mr. Tizhanet is unable to speak for himself due to advanced multiple sclerosis. Mr. McGrath requested Mr. Tizhanet to nod in agreement to indicate that he is very satisfied with the services he receives through CoLTS and the MCO, Amerigroup.

The chair asked the presenters to step down while the committee considered bills and memorials for endorsement as several voting members needed to leave early.

Endorsement of Legislation

Mr. Hely and Ms. Wells described bills and memorials for consideration for committee endorsement. Copies of the bills and memorials are contained in the meeting file. After discussion, the following bills received the endorsement of the committee:

- a bill to fund emergency medical services through a premium surtax on homeowners' insurance and vehicle insurance; five voting members supported endorsement and two opposed;
- a previously endorsed memorial requesting a task force to create a single, credentialing process for health care providers was amended to include nurse practitioners on the task force; endorsement was supported unanimously;
- a previously endorsed memorial to track funding for nursing education and nursing faculty was amended to include the higher education funding formula and other sources of funding; endorsement was supported unanimously;
- a bill to extend to schools a requirement to provide private locations for breastfeeding mothers was amended to remove penalties; endorsement for the bill as amended was unanimous;
- a memorial to design a clinic-based model of health care delivery and reimbursement; four members voted to endorse and three were opposed; and
- a memorial calling for a study of how schools provide for the needs of students with autism spectrum disorder was unanimously endorsed.

A bill to require the HSD to study outcomes of patients enrolled in medical homes was withdrawn from endorsement consideration. A bill to provide disclosure and resident protections in continuing care communities and a bill to allow contract employees of Miners' Colfax Medical Center access to Tort Claims Act coverage were not endorsed.

Home and Community-Based Waivers: How Administrative and Financial Duties Are Apportioned Among Departments (resumed)

Questions and comments from the committee covered the following areas:

- whether service dogs are permitted in the waivers; training of a service dog is covered, but not the ongoing care of the dog;
- clarification regarding the costs and effectiveness of the assisted employment program; the program is very valuable, but does not meet the needs of every DD person; the DOH offered to provide the exact costs of the program;
- whether there is really a need for a third-party assessor; the state consolidated two contracts into one through a formal procurement process;
- the number of people remaining in the *Jackson* lawsuit class; around 334;
- the number of staff and contractors at the DOH who monitor the members of this class; all 4,000 recipients of the DD waiver (which includes the members of the *Jackson* class) are monitored by around 156 staff in five regional offices;
- whether the state is close to disengaging from the lawsuit;
- clarification regarding why the DOH did not spend the money the legislature appropriated to reduce the DD waiting list;
- whether the DOH is close to having recommendations for cost-containment in the DD waiver; yes, the DOH will be resubmitting the waiver next year that will require that specificity;
- a recommendation that advocates be included in the development of the renewed waiver;
- whether there is any consideration of moving the DD waiver from the DOH to the ALTSD; not at this time;
- the number and types of nursing facilities there are in the state, and clarification regarding how these facilities are reimbursed;
- whether other states also have waiting lists for waiver services, and whether there is a higher incidence of disability in New Mexico;
- whether other states have experienced lawsuits similar to the *Jackson* lawsuit; and
- clarification regarding the Mi Via waiver, how it differs from the other waivers and how it fits within the CoLTS program.

CoLTS Survey Results

Mr. Hely presented the results of a survey that was conducted at the request of Representative Heaton to identify concerns of providers in the CoLTS program. The survey is not a scientific survey. It was sent to home care providers, nursing homes, hospitals and pharmacies.

Most respondents reported difficulties with payments, increased administrative costs and general inefficiencies in the program since the inception of CoLTS. More than 87 percent of providers felt the CoLTS program has not resulted in a more efficient and effective system than what was in place prior to the implementation of CoLTS.

Committee members had concerns and questions in the following areas:

- an observation that the CoLTS program does not seem to be working and that providers are not satisfied;
- whether most providers are contracted with both MCOs; and
- a desire to hear directly from providers.

CoLTS Providers Panel

Joie Glenn, executive director, New Mexico Association for Home Care and Hospice (NMAHHC), commented that a fragmented, siloed and poorly reimbursed system of long-term services was turned over to two MCOs that have not improved the system, that costs more and that is more administratively burdensome. She emphasized that members of her association are actively involved in a waiver committee to revise regulations and to work with the MCOs to improve the program. Improvements have been made, and CoLTS is close to being a program that provides the right services at the right time to the right people. Continued work is needed to remove the silos, improve communication and ensure adequate reimbursement. Opportunities exist to improve the program, and these steps must be pursued. She urged a removal of the silos of care through a restructuring of the CoLTS program.

Linda Sechovec, executive director of the New Mexico Health Care Association (NMHCA), provided the perspective of nursing facility providers. She acknowledged that her association shares many of the concerns already mentioned by Ms. Glenn. She identified current concerns with managed care and with utilization review. Payment struggles remain the highest concern. Immediate issues concerning nursing facilities and the Medicaid benefit were highlighted. She has had to hire an additional person to deal with problems and complaints related to CoLTS. There is no effective negotiation of rates with the MCOs; the NMHCA advocates rates set by the state.

Jeff Dye, president and C.E.O., New Mexico Hospital Association, noted that while hospitals are probably better able to absorb delays in payments from CoLTS MCOs, they are facing dire consequences from recently announced payment cuts by the MAD in proposed regulations.

Committee members had questions and comments as follows:

- clarification regarding the "silos" that Ms. Glenn referenced;
- how Arizona has handled long-term services, especially regarding rate setting for nursing homes;

- clarification regarding the effects of federal reform efforts on nursing home, hospital and home health care reimbursement;
- ways in which the CoLTS program could be better structured;
- clarification regarding the methodology by which the state could set rates for nursing homes; and
- whether the system for reimbursement should be set by legislation or by regulation.

Public Comment

Karen Wagner, office manager for her husband, a dentist in Albuquerque, provided insights regarding her billing experience in that office. The nature of her husband's practice is quite unique; he creates prosthetic appliances such as noses for people with cancer, palate inserts and replacements for other body parts in rare situations. Her job is to speak personally with insurers to advocate for reimbursement on behalf of her patients. She has had a very good experience with Amerigroup and would like to speak with Evercare but has not yet had the opportunity.

Michael Carter, C.E.O., Miners' Colfax Medical Center, discussed the difficulty the hospital has contracting with professional employees due to problems obtaining medical malpractice insurance and requested a bill to grant access to the Tort Claims Act.

Len Trainer, Heritage Home Healthcare and Hospice, noted that his agencies are experiencing problems with timely payment, responsiveness of MCOs, increased administrative costs, borrowing and other issues. He stated, however, that the survey misrepresents the actual feeling of providers in the state. He feels there is much about CoLTS that is good and that the MCOs are now much closer to the health needs of the patients around the state. He believes this model has the best chance of ultimately eliminating silos of care and achieving cost containment. He urged the committee to give the CoLTS program a longer chance.

David Foster, president, Maroland at Home, believes there is some validity to all the comments already made; however, as the chair of the NMAHHC waiver committee, he appreciates the dialogue that is going on with the state and the MCOs. A program that is only one year old is too young to fully judge. Efforts need to be made to work together to achieve improvements, and these efforts are underway.

Lynn White, administrator, Santa Fe Care Center, agreed with the remarks of Ms. Sechovec and Representative Heaton and expressed appreciation for the survey. He noted there is duplication in the system. The fact that the survey showed that most CoLTS providers had to seek short-term funding is a reflection of the level of the problems. He fears that there will be long-term-care facilities that go out of business.

Debbie Vargas, Lorraine McGreatland and Marie Garcia, family living providers, testified on behalf of that program that cares for DD patients. It is a good program that allows people to live at home instead of in an institution or group home. They cannot sustain more cuts.

Charles Marquez, lobbyist, NMHCA, made clarifying comments about the problems of nursing homes negotiating rates with CoLTS MCOs. He supported the need to support adequate reimbursement for nursing facilities as vital providers.

Mr. Dye offered a comment on behalf of Michelle Lujan Grisham and Delta Consulting, which wished the committee to know that the Laguna Pueblo Nursing Home and Laguna Rainbow Elder Center have had excellent interactions with Amerigroup, but that Evercare has not been supportive of their programs.

Thanks were expressed for the committee's participation during the interim, for the leadership and for the support of staff. There being no further business, the committee was adjourned at 5:40 p.m.